

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-O-11261-RAP
)	
DAMON MICHAEL HEILWEIL,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 206620,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Damon Michael Heilweil (respondent) was charged with (1) failing to perform with competence; (2) failing to respond to client inquiries; (3) failing to refund unearned fees; and (4) failing to cooperate in a State Bar investigation. He failed to file a response to the notice of disciplinary charges (NDC), and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the NDC and the attorney fails to have

¹ Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as respondent's default was entered prior to July 1, 2014, the rules which were in effect at the time respondent's default was entered are the operative rules in this matter.

the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on May 25, 2000, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 21, 2013, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, to his membership records address.³ The NDC was also served on respondent by (1) U. S. first-class mail at two other addresses;⁴ (2) facsimile transmission to respondent's membership records facsimile number;⁵ and (3) electronic service to respondent's membership records email address and to an email address listed in a public records search.⁶

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² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

³ The United States Postal Service (USPS) returned the NDC bearing the stamp "'Not Deliverable As Addressed, Unable to Forward.'" (Declaration of Kelsey J. Blevings attached to the State Bar's motion for the entry of respondent's default.)

⁴ Both were returned to the State Bar by the USPS.

⁵ The facsimile receipt indicated that the document was successfully transmitted.

⁶ Both email receipts indicated that the emails were successfully transmitted.

The State Bar received a telephone call from respondent's ex-spouse in mid-August 2013. She provided the State Bar with respondent's mobile telephone number which is respondent's official membership private telephone number.⁷

The State Bar also conducted an online public records search, but none of the telephone numbers or addresses listed were more recent than respondent's membership records address. The State Bar also conducted an online search for additional telephone numbers for respondent, but no records were found. The State Bar also attempted to reach respondent by telephone at his membership records telephone number and at his membership records private telephone number. A message was left at each number requesting that respondent return the call as soon as possible, but as of October 1, 2013, respondent had not responded to the voicemail messages.

Respondent failed to file a response to the NDC. On October 1, 2013, the State Bar filed and properly served a motion for entry of his default on respondent by certified mail, return receipt requested, to his membership records address. The motion was also served on respondent by (1) U.S. first-class mail to two other addresses; (2) facsimile transmission to his membership records facsimile number; and (3) electronic service to his official membership records email address and to an email address listed in a public records search. The motion complied with the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.)⁸ The motion also notified respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. Respondent did not

⁷ On July 11, 2013, a voicemail message was left for respondent by a State Bar investigator at this telephone number, asking respondent to return the call as soon as possible. However, as of October 1, 2013, neither the investigator nor the State Bar had not received a response to the voicemail.

⁸ As set forth in the State Bar's petition for disbarment filed on July 3, 2014, the return receipt for the motion was not signed.

file a response to the motion, and his default was entered on October 17, 2013. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time. The order was returned to the State Bar Court with a sticker indicating that it was not deliverable as addressed and unable to be forwarded.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On July 3, 2014, the State Bar filed and properly served a petition for disbarment on respondent by certified mail, return receipt requested, and by regular U.S. mail, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) the State Bar has not had contact with respondent since the default order was served;⁹ (2) there are no other disciplinary matters pending against respondent; (3) respondent does not have a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on July 29, 2014.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable of the rule and statutory violations as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

⁹ This is the same day that default was entered.

Case Number 13-O-11261 (Tagaryan Matter)

Count One – respondent willfully violated rule 3-110(A) of the State Bar Rules of Professional Conduct (failing to perform legal services with competence) by performing no legal services of value on his client’s behalf and thereby intentionally, recklessly, or repeatedly failing to perform legal services with competence.

Count Two – respondent willfully violated Business and Professions Code section 6068, subdivision (m) (failure to communicate) by failing to promptly respond to two telephonic and five written status inquiries of his client which respondent received.

Count Three – respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to promptly refund, upon termination of employment, any part of the \$1,460 advanced fee paid by his client which was not earned.

Count Four – respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to provide a written response to three letters from the State Bar which respondent received and that requested his response to the allegations of misconduct being investigated in this matter.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent’s disbarment is recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;
- (2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar (a) filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address; (b) served the NDC on respondent by U. S. first-class mail at two other addresses, by facsimile transmission to respondent’s membership records facsimile

- number, and by electronic service to respondent's membership records email address and to an email address listed in a public records search; (c) conducted online searches of public records and additional telephone numbers for respondent; and (d) attempted to reach respondent by telephone at his membership records telephone number and at his membership records private telephone number;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Damon Michael Heilweil be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to Petros Tagaryan in the amount of \$1,460 plus 10 percent interest per year from January 1, 2013. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and

(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Damon Michael Heilweil, State Bar number 206620, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: September 15, 2014

RICHARD A. PLATEL
Judge of the State Bar Court